LB & B Associates, Inc. *and* International Association of Machinists and Aerospace Workers, District Lodge No. 190 of Northern California, Local Lodge No. 801, AFL–CIO. Case 32–CA–19334

September 16, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND WALSH

On November 13, 2002, Administrative Law Judge John J. McCarrick issued the attached decision.* The Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party filed answering briefs. In addition, the Charging Party filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision, and to adopt the recommended Order as modified.

The judge found that the Respondent discharged employee Mark Becker in retaliation for filing a grievance, thus violating Section 8(a)(3) and (1). He ordered a make-whole remedy, including Becker's reinstatement, for this unfair labor practice. We affirm the judge's finding of unlawful discrimination and adopt his recommended remedy.

The judge also found that the Respondent refused to bargain over the decision to discharge Becker and its effects, in violation of Section 8(a)(5) and (1). He recommended a broad order for this violation, i.e., that the Respondent bargain with the Union "with respect to wages, hours and other terms and conditions of employment."

We find it unnecessary to reach the merits of this 8(a)(5) allegation. The judge's recommended Order is overbroad for the violation he found, i.e., a refusal to bargain over the discharge decision and its effects. A bargaining remedy tailored to his specific finding is unnecessary in light of the 8(a)(3) reinstatement and make-whole remedy we have adopted. In addition, considering the finding of unlawful discrimination, the Respondent's decision to discharge Becker was itself unlawful. Accordingly, in the circumstances of this case, the 8(a)(5) allegation is dismissed.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and orders that the Respondent, LB & B Associates, Inc., Fallon, Nevada, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete paragraphs 1(b) and 2(a) and reletter the subsequent paragraphs accordingly.

2. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. September 16, 2003

Robert J. Battista, Chairman

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

* On December 3, 2002, the judge issued an erratum correcting par. 2(e) of his recommended Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in protected activity within the meaning of Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Mark Becker full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Mark Becker whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Mark Becker, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

LB & B ASSOCIATES, INC.

Jo Ellen Marcotte and *Karen Reichmann, Esqs.*, for the General Counsel.

Benjamin Thompson and *Jennifer Miller, Esqs. (Wyrick Robbins Yates & Ponton LLP),* of Raleigh, North Carolina, on behalf of the Respondent.

David Rosenfeld, Esq. (Van Bourg, Weinberg, Roger & Rosenfeld), of San Francisco, California, on behalf of the Charging Party.

DECISION

JOHN J. MCCARRICK, Administrative Law Judge. This case was tried in Reno, Nevada, on July 30, 2002,[1] upon the General Counsel's amended consolidated complaint issued July 19, which alleges that LB & B Associates, Inc. (Respondent) committed certain violations of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). Respondent timely denied any wrongdoing. After the hearing commenced, Respondent and the Charging Party entered into a non-Board settlement agreement that included terms and conditions of a collective-bargaining agreement covering Respondent's employees in the unit represented by the Charging Party as set forth in the amended consolidated complaint. The Charging Party represented on the record that it was satisfied with the terms of the settlement agreement and moved to withdraw charges and amended charges in Cases 32–CA–19346, 32–CA–19471, and 32–CA–19638. These charges alleged various violations of Section 8(a)(1) and (5) of the Act, including unilateral changes in work rules, unilateral changes in terms and conditions of employment, failing to provide the Union with requested information, and failure to meet with the Union to bargain over terms and conditions of employment. There was no opposition to the non-Board settlement agreement by counsel for the General Counsel. The remaining charge in Case 32–CA–19334 involves the January 4 discharge of employee Mark Becker. Based upon the considerations the Board set out for approving non-Board settlements in *Independent Stave Co.*, 287 NLRB 740, 743 (1987), I approved the non-Board settlement and the Charging Party's withdrawal of the charges in Cases 32–CA–19346, 32–CA–19471, and 32–CA–19638.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by counsel for the General Counsel and counsel for Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a North Carolina corporation, with an office and place of business in Fallon, Nevada, has been engaged in providing operational and maintenance services to the United States Navy at its Naval Air Station Fuel Farm located in Fallon, Nevada (facility). During the past 12 months, Respondent, in the course and conduct of its business operation at the facility, derived gross revenues in excess of $50,000 from the United States. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that International Association of Machinists and Aerospace Workers, District Lodge No. 190 of Northern California, Local Lodge No. 801, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

The Union has represented a unit of all full-time and regular part-time drivers, dispatchers, fuel distribution system mechanics, and LOX farm employees employed by Respondent and its predecessors at the facility since 1999. On about October 1, 2001, Respondent took over the operation of the facility pursuant to an agreement with the United States Navy and hired a majority of its predecessor's employees. Respondent's project manager was William Jabines (Jabines). Respondent's supervisors, Stanley Citko (Citko) and David Baumbach (Baumbach) reported to Jabines.

On October 12, 2001, the Union sent a letter to Respondent demanding that Respondent refrain from making changes in terms and conditions of employment without affording the Union an opportunity to engage in decision and effects bargaining.[2] The letter stated in pertinent part that, "3) No employee should be warned, counseled, disciplined or terminated without bargaining."[3]

Respondent hired Mark Becker (Becker), a dispatcher, on about October 1, 2001. Becker had been employed by a series of Respondent's predecessors since about April 1993. On about

[1] All dates are in 2002 unless otherwise stated.

[2] GC Exh. 6.

[3] Id.

December 26 and 27, 2001, Becker observed Baumbach logged in to a computer for the contracting officer representative. As a result of what he perceived to be a supervisor performing bargaining unit work, Becker filed a grievance on December 27, 2001, with Reggie Rutan, Union's shop steward. On January 3, the Union faxed a copy of the grievance to Respondent at about 4:36 p.m.[4] The handwriting below the dotted line on the grievance was not present when the grievance was faxed to Respondent. Union Business Representative Mark Martin (Martin) called Jabines on January 3 and discussed Becker's grievance. Jabines said it wasn't a good grievance since it didn't mention when it happened. Jabines then told Martin that Becker had put an improper time on his time card. Martin told Jabines if there was no merit to the grievance and to put his response on the grievance form and return it to him. There was no discussion during this conversation about terminating Becker for falsifying time records.

On Friday, December 28, 2001, Becker checked his schedule for the following week before taking a 4-day holiday. The schedule indicated Becker was to work on Wednesday, January 2, from 7:30 a.m. to 3:30 p.m. Because there had been frequent changes in his schedule, the morning of January 2, Becker checked at work and found his schedule had been changed to 6 a.m. to 2 p.m. Becker rushed to work and arrived at 6:30 p.m. Becker worked until 2 p.m. However, when Becker recorded his time worked for January 2 on the time record he put down that he worked from 6 a.m. to 2 p.m. for a total of 8 hours.

Respondent did not require its employees to punch in and out of work on a timeclock. Rather, employees signed in and out on a handwritten union employee time record (time record).[5] Each employee recorded his time in and out and the total number of hours worked for each day. Jabines admitted he told employees he would meet with them at the end of the pay period to review their timesheets to insure they were accurate. It was Respondent's practice to have the employee and his supervisor review, certify and sign the time record at the end of the pay period. The certification at the bottom of the timesheet provides, "I hereby certify that all information contained on this record is accurate and correct. Furthermore, I understand that falsification on this document is cause for immediate dismissal."[6] Respondent offered no other documentary evidence of Respondent's policies and procedures concerning discipline of employees who falsify time records. However, Jennifer Gross, Respondent's human resources manager said that in each case where Respondent's employees have falsified a time record, they have been discharged.

On January 3, when Becker arrived for work at about 7:15 a.m. he was confronted by his supervisor, Baumbach. Baumbach asked Becker, "When did you get here yesterday?" Becker said that he had arrived at 6:30 a.m. Baumbach replied, "Why did you sign in at 6:00 a.m.?"

At about 7:30 a.m. on January 3, Baumbach brought Becker's January 2 time record that reflected Becker had worked from 6 a.m. to 2 p.m. to Jabines. In the morning on January 3, Jabines called Becker into his office. Jabines told Becker that he did not need to bring anybody with him; that it would be a friendly conversation and that, "[i]f you have bad air with Baumbach, take care of it. Go back to your office."[7] Later that day, Becker went to Baumbach's office and apologized for not signing in properly. Baumbach said, "You lied to me." Becker replied, "It will never happen again." Baumbach said, "It better not." At the end of his shift on January 3, Jabines called Becker into his office. Jabines was showing Becker's grievance to Baumbach and said, "What the hell is this fucking shit." Jabines testified that he made the decision to fire Becker for falsifying the time record on January 3, before he received Becker's grievance from the Union. However, he did not fire Becker until January 4. On January 4 at 10:30 a.m., Jabines approached Becker and said, "Come with me." Jabines took Becker's time record and said, "As of this moment you are terminated." Jabines told Becker he was terminated for falsifying his time record.

B. The Analysis

The General Counsel contends that Respondent violated Section 8(a)(1) and (3) of the Act by terminating Becker because he engaged in union or protected concerted activity in filing the December 27, 2001 grievance. The General Counsel also argues that in terminating Becker without notifying or affording the Union an opportunity to bargain over the decision and effects of the decision, Respondent violated Section 8(a)(1) and (5) of the Act. Respondent argues that it fired Becker because he falsified his time record and that it had no obligation to bargain with the Union over its decision or the effects of its decision to fire Becker.

The standard for proving that the discharge of an employee violates Section 8(a)(1) and (3) of the Act is well established. The burden is on the General Counsel to establish the presence of union activity or protected conduct, Respondent's knowledge of the union activity and a connection between the discrimination and Respondent's antiunion animus. Once the General Counsel has established a prima facie case, the burden shifts to Respondent to show it would have taken the action even in the absence of the discriminatee's protected activity. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

Filing a grievance is protected concerted activity within the meaning of the Act. *Prime Time Shuttle International*, 314 NLRB 838, 841 (1994). A grievance filed in good faith is pro-

[4] GC Exh. 27.
[5] GC Exh. 29.
[6] R. Exh. 36.

[7] There was some confusion in Becker's affidavit concerning the statement Jabines made during the morning meeting with Becker on January 3. In the affidavit, Becker averred that Jabines said that, "reprimands would be made" for his timesheet entry. It is clear from the entire context of the affidavit and Becker's contemporaneous notes that Jabines told Becker, "no reprimands would be made" and Becker's failure to correct his affidavit was an omission. Further, I credit the testimony of both Becker and Martin that Jabines told them that there would be no discipline of Becker for the timesheet discrepancy. I find that Jabines testimony on direct examination was often vague, lacked specificity and was given in response to leading questions. I do not credit his denials that he never discussed union representation with Becker on January 3 and that he did not tell Martin on January 3 that there would be no discipline of Becker.

tected conduct even when the employee has no contractual right to file a grievance. *Regency Electronics, Inc.*, 276 NLRB 4 fn. 3 (1985).

Becker's grievance alleging Baumbach performed unit work was filed on behalf of himself and others and, thus, was protected conduct. Jabines was aware that Becker had filed the grievance and demonstrated his hostility toward Becker's conduct when he showed Becker's grievance to Baumbach and said, "What the hell is this fucking shit." Becker was fired the day after he filed the grievance. I find that the General Counsel has established the prima facie elements of a violation of Section 8(a)(1) and (3) of the Act and the burden shifts to Respondent to show that it would have terminated Becker, even in the absence of his protected activity.

Respondent contends that in terminating Becker, it was solely motivated by his falsification of his time records. Respondent's defense fails for two reasons.

First, Respondent did not consider Becker's timesheet discrepancy serious until it learned he had filed a grievance. There is no dispute that Becker recorded on his timesheet that he worked on January 2 from 6 a.m. to 2 p.m. when he actually worked from 6:30 a.m. to 2 p.m. Nor is there any dispute that when confronted with this discrepancy by Baumbach the morning of January 3, Becker readily admitted to both Baumbach and Jabines he had made the error. Initially Jabines was not concerned with the discrepancy in Becker's timesheet. When Jabines met with Becker the morning of January 3 concerning the timesheet, he told Becker that their meeting would be a friendly one, that he did not need a union representative present and that, "no reprimands would be made." Jabines sent Becker back to work and told him to "clear the bad air" with Bumbach. Jabines failed to tell Becker that he was conducting an investigation that could result in discipline. Although Jabines claims he decided to fire Becker before knowing about the grievance, during his conversation with Union Representative Martin the afternoon of January 3, after learning of Becker's grievance, Jabines did not tell Martin he had already decided to fire Becker for falsifying his time record. Other than Jabines' testimony, no evidence was produced to support the contention that there was an ongoing investigation on January 3–4 into Becker's timesheet entry. I find that no disciplinary action was considered or taken against Becker until Jabines learned Becker had filed a grievance late in the afternoon on January 3.

Second, it was Respondent's practice to allow employees to correct errors in their timesheets before they were certified and submitted for payment at the end of the pay period. Jabines admitted that he told employees they could review their timesheets with their supervisor and make corrections before the timesheets were submitted to the corporation for payment at the end of the pay period.[8] Given this policy, it is not surprising that Jabines did not consider disciplining Becker when he first learned of the timesheet discrepancy.

I find that Respondent's defense is pretextual and that Becker was fired because he filed the grievance on January 3. I find that Respondent violated Section 8(a)(1) and (3) of the Act in terminating Becker.

The General Counsel argues further that Respondent violated Section 8(a)(1) and (5) of the Act by failing to bargain with the Union before it terminated Becker because the decision to terminate Becker for falsifying timerecords was discretionary. Respondent contends it had no obligation to bargain with the Union regarding its decision to terminate Becker since the termination did not involve discretion and it did not constitute a change in Respondent's policies or the terms and conditions of employment.

Respondent contends that two conditions must be met before it has an obligation to bargain with the Union over the decision and effects of its decision to terminate Becker. First the decision must involve employer discretion, *Eugene Iovine, Inc.*, 328 NLRB 294 (1999), and second, the employer must have made a unilateral change in lawful terms and conditions of employment when it employed discipline. *McClatchy Newspapers*, 337 NLRB No. 180 (2002).

As a successor employer, Respondent had the right to set initial terms and conditions of employment. *NLRB v. Burns Security Services*, 406 U.S. 272, 294 (1972). However, where the implementation of a term or condition is discretionary, an employer has an obligation to notify and bargain with the union in advance of implementing the decision. *Washoe Medical Center*, 337 NLRB No. 32 (2001); *Monterey Newspapers*, 334 NLRB 1019 (2001); *Eugene Iovine, Inc.*, supra. In *Washoe Medical Center*, supra, slip op. at 1, the Board cited *Oneita Knitting Mills*, 205 NLRB 500 (1973), and held:

> In *Oneita*, the Board held that once employees choose to be represented by a union, their employer may not unilaterally discontinue a discretionary merit wage increase program. Further, the employer may not continue unilaterally to exercise its discretion in determining the amounts or timing of the merit increases.

Contrary to Respondent's assertion in its brief, the Board has never established a two part test for determining if an employer has an obligation to bargain over the decision to implement discretionary employee discipline. The administrative law judge not the Board in *McClatchy*, slip op. at 42 noted:

> There is no evidence that Respondent did not apply its preexisting employment rules or disciplinary system in determining discipline herein. Therefore, Respondent made no unilateral change in lawful terms or conditions of employment when it applied discipline. That is true even though the discipline may have been tightened. See *Bath Iron Works Corp.*, 302 NLRB 898, 901 (1991), where the Board cited with approval the finding of *Trading Port*, 224 NLRB 980 (1976), that where the standards [of productivity/efficiency] and sanctions remained the same, the related "tightening of the application of existing disciplinary sanctions did not require bargaining with the union." While Respondent has no obligation to notify, and bargain to impasse with the Union before imposing discipline,

[8] GC Exh. 29 reflects that Becker was at the beginning of a pay period when he recorded his times on January 2. Becker did not sign the certification at the bottom of the timesheet until January 4 when Respondent was aware of the January 2 discrepancy. No evidence was adduced to explain why Jabines did not correct the hours worked on Becker's timesheet.

> Respondent has an obligation to bargain with the Union, upon request, concerning the discharges, discipline, or reinstatement of its employees.

The administrative law judge in *McClatchy* did not specifically find discretion was not a relevant consideration in determining if an employer has an obligation to bargain over the decision to implement discipline. I find that the Board's holdings in *Oneita* and *Washoe Medical Center*, supra, are the controlling law herein.

In this case, the exercise of discretion was present in the decision to terminate Becker. Initially, Jabines decided that no discipline was warranted in Becker's case. Jabines told Becker to go back to work and there would be no reprimand. Jabines decided to terminate Becker only after learning Becker had filed a grievance. Jabines' decision establishes that he had discretion in determining the degree of discipline for falsification of time records. Further, despite Jabines' and Gross' testimony, it is apparent, that there was no mandatory rule for terminating employees who put down incorrect times on their timesheets. In view of Jabines' practice of allowing employees to correct their timesheets at the end of the pay period before they were certified and submitted, it is likely that Becker's action was not considered falsification.

Moreover, Jabines' termination of Becker for allegedly falsifying his timesheet constituted a unilateral change in Respondent's rules as initially implemented. Respondent, through Jabines, implemented the rule that employees could make changes to their timesheets before they were certified and submitted for payment. Respondent decided to terminate Becker without providing him an opportunity to correct the error he had made on his timesheet.

Under *Oneitta, Washoe Medical Center*, and *McClatchy,* supra, I find Respondent failed to bargain with the Union over its decision and the effects of its decision to terminate Becker and violated Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act by terminating Mark Becker for engaging in protected activities.

4. Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act by refusing to bargain with the Union over the decision and the effects of the decision to terminate Mark Becker.

5. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged Mark Becker, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent, having refused to bargain in good faith with the Union over the decision and the effects of the decision to terminate Mark Becker must, upon request bargain in good faith with the Union over the decision and the effects of the decision to terminate Mark Becker.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

The Respondent, LB&B Associates, Inc., Fallon, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against any employee for engaging in protected activities.

(b) Refusing to bargain collectively with International Association of Machinists and Aerospace Workers, District Lodge No. 190 of Northern California, Local Lodge No. 801, AFL–CIO, as the exclusive bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time drivers, dispatchers, fuel distribution system mechanics, fuel distribution system operators, mechanics, and LOX farm employees employed by Respondent at the Naval Air Station Fuel Farm located at Fallon, Nevada; excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

(c) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with International Association of Machinists and Aerospace Workers, District Lodge No. 190 of Northern California, Local Lodge No. 801, AFL–CIO, as the exclusive collective bargaining of its employees in the above described unit with respect to wages, hours and other terms and condition of employment.

(b) Within 14 days from the date of this Order, offer Mark Becker full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(c) Make Mark Becker whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

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[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge, and within 3 days thereafter notify Mark Becker in writing that this has been done and that the discharge will not be used against him in any way.

(e) Preserve and, within 14 days of a request or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Fallon, Nevada copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 4, 2002.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, San Francisco, California, November 13, 2002

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in protected activity within the meaning of Section 7 of the Act.

WE WILL NOT refuse to bargain in good faith with International Association of Machinists and Aerospace Workers, District Lodge No. 190 of Northern California, Local Lodge No. 801, AFL–CIO, by refusing to bargain over the decision and effects of the decision to discharge Mark Becker.

WE WILL, within 14 days from the date of the Board's Order, offer Mark Becker full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Mark Becker whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Mark Becker, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

LB & B ASSOCIATES, INC.